



**Minority Media &
Telecom Council**

3636 16th Street N.W. Suite B-366
Washington, D.C. 20010
Phone: 202-332-0500 Fax: 202-332-0503
www.mmtconline.org

May 28, 2013

Chairwoman Mignon Clyburn
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Softbank-Sprint Acquisition, IB Docket No. 12-343

Dear Chairwoman Clyburn:

The Minority Media and Telecommunications Council ("MMTC") respectfully submits this letter to urge the Commission to solicit additional information from the Applicants to help the Commission fulfill its statutory mandate to determine whether SoftBank Corp.'s ("SoftBank") proposed acquisition of Sprint Nextel Corp. ("Sprint") will affirmatively serve the public interest, convenience, and necessity.¹

SoftBank has asked for permission to acquire a 70% controlling interest in Sprint, and through that acquisition, control of Clearwire Corp. ("Clearwire").² The combination of Sprint and Clearwire represents the largest holding of broadband spectrum in U.S.

¹ 47 U.S.C. § 310(d).

² At the same time, DISH Network Corporation ("DISH"), has also indicated a strong interest in acquiring Sprint, and, according to news reports, has entered into confidential discussions with Sprint to conduct due diligence. See Letter from Charlie Ergen, Chairman, DISH Network Corporation, to James H. Hance, Chairman, Board of Directors, Sprint Nextel Corporation (Apr. 15, 2013), available at <http://completedishsolution.com/media/resources/offer-letter/> (last accessed May 23, 2013); Cecilia Kang, Dish Network announces \$25.5 billion bid for Sprint Nextel, Washington Post, Apr. 15, 2013, http://www.washingtonpost.com/business/technology/dish-network-announces-255-billion-bid-for-sprint-nextel/2013/04/15/cdb48ca4-a5cc-11e2-a8e2-5b98cb59187f_story.html (last accessed May 23, 2013). MMTC takes no position on the relative value of the SoftBank and DISH proposals. To be fair, MMTC is submitting to DISH the same list of questions that it proposes that the Commission put to SoftBank and Sprint.

history,³ and SoftBank's dual acquisition would constitute the second largest wireless acquisition in U.S. history. It has the potential to have a significant impact on minority communities, who constitute almost 40% of the users of mobile services and are often more highly dependent on mobile communications services than other groups in this country.⁴

As you and other Commissioners have recognized, the Commission is charged with not only safeguarding, but *advancing* the public interest through its role in approving transactions involving Commission licensees.⁵ This means that it is not sufficient to put forth minimum qualifications and cite to ephemeral benefits.⁶ The applicants must make

³ Only Cingular's acquisition of AT&T was larger. See Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, 19 FCC Rcd 21522, 21542 ¶ 40 (2004) (valuing acquisition at around \$40 billion). Although the Sprint-Nextel transaction was valued in excess of \$37 billion, that transaction was a merger, not an acquisition. See Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, 20 FCC Rcd 13967 (2005).

⁴ According to a recent Pew Research Center study, 39% of mobile phone owners are minorities. Leah Christian et al., Pew Research Center for the People and the Press, *Assessing the Cell Phone Challenge to Survey Research in 2010* at 5 (2010), available at <http://www.pewresearch.org/files/old-assets/pdf/1601-cell-phone.pdf> (last accessed May 23, 2013). In addition, 49% of African American and Hispanic adults have a smartphone, a higher percentage than the national average of 46% for all adults. Kathryn Zickuhr & Aaron Smith, Pew Research Center's Internet & American Life Project, *Digital Differences* 17 (2012), available at <http://pewinternet.org/Reports/2012/Digital-differences.aspx> (last accessed May 23, 2013).

⁵ Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc., For Consent to Assign Licenses and Transfer Control of Licenses, 26 FCC Rcd 4238, 4514-16 (2011) ("Comcast-NBCU Order") (concurring statement of Comm'r Mignon L. Clyburn) (approving of "one of the most rigorous reviews of a transaction ever" which resulted in the imposition of several conditions and agreement to Memoranda of Understanding to protect the public interest); id. at 4511-13 (dissenting statement of Comm'r Michael J. Copps) ("This agency's charge under the Communications Act is to look at not just the competitive effects but also the broader public interest implications of an acquisition.") Of course, sometimes advancing the public interest means asking applicants to do more than the bare minimum that is required under existing laws and regulations. See Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices, Report and Order, 18 FCC 2d 240, 245 (1969) ("[V]oluntary measures may well be the chief hope of achieving equal employment opportunity at the earliest possible time, and the decision to take such action rests with the individual broadcaster.")

⁶ See, e.g., Comcast-NBCU Order, 26 FCC Rcd at 4511 (dissenting statement of Comm'r Michael J. Copps) (stating that the deal's touted "elimination of double marginalization" was not a sufficient public interest benefit for such a large transaction).

a positive showing of how the transaction will produce *concrete* benefits for consumers, including historically underserved and underrepresented groups.⁷ Indeed, the Commission is required by law to “promot[e] economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women....”⁸

But it is not yet clear, based on the record to date (including the Applicants’ public interest statement), how SoftBank and the transaction will make progress in these critical areas of concern.⁹ SoftBank’s record, and its forward looking commitments to these diversity issues, are especially critical to the Commission’s public interest determination because SoftBank is a new entrant to the U.S. market, and the Commission has not yet had an opportunity pass on SoftBank’s qualifications to hold Commission licenses.

As you and the other Commissioners have stated, it better serves the Commission and the public to engage in a deliberative decision-making process with a robust public record.¹⁰

⁷ See id. at 4512 (citing diversity as one of “the three essential pillars of the public interest standard mandated by law.”)

⁸ See 47 U.S.C. § 309(j)(3)(B). To be sure, the Commission’s evaluation of SoftBank’s offer for Sprint need not, and should not, occur in a vacuum. Two broader proceedings are directly relevant. In the first, the Commission is considering adjustments to the “spectrum screen” that the Commission uses in its evaluation of proposed mergers and acquisitions. See Policies Regarding Mobile Spectrum Holdings, Notice of Proposed Rulemaking, WT Docket No. 12-269, FCC 12-119 (rel. Sept. 28, 2012). In the second, the Commission is assessing the state of competition in the wireless market. See Wireless Telecommunication Seeks Comment on the State of Mobile Wireless Competition, Public Notice, WT Docket No. 13-135, DA 13-1139 (rel. May 17, 2013); see also 47 U.S.C. § 332(c)(1)(C). MMTC recently asked the Commission to issue a supplement to this public notice that requests information regarding minority- and women-owned business enterprises. See Letter from David Honig, President, MMTC, to Mignon Clyburn, Chairwoman, FCC, WT Docket No. 13-135 (May 20, 2013). MMTC believes that all three of these proceedings should be equally informed by the statutory objective of disseminating licenses among a diverse group of applicants.

⁹ Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, IB Docket No. 12-343, Public Interest Statement (filed Nov. 16, 2012); Applications of Sprint Nextel Corporation, Transferor, and SoftBank Corp., and Starburst II, Inc., Transferees, for Consent to Transfer of Control of Licenses and Authorizations, IB Docket No. 12-343, Amendment (filed Dec. 20, 2012).

¹⁰ Comcast-NBCU Order, 26 FCC Rcd at 4514-16 (concurring statement of Comm’r Mignon L. Clyburn) (approving of “one of the most rigorous reviews of a transaction ever” which resulted in the imposition of several conditions and agreement to Memoranda of Understanding to protect the public interest).

Given the sparse record to date, and SoftBank's status as a new entrant, SoftBank should have an opportunity to flesh out its record on diversity issues and its commitment to advancing these concerns going forward. MMTC therefore asks the Commission to request additional information on how the transaction would, among other things, increase broadband access to underserved and unserved areas and expand opportunities for women and minorities in the field of communications.

Key questions that the Commission should ask the applicants include:

- How would the transaction expand access to broadband, especially for underserved groups and communities and for rural citizens?
- It is well established minority populations depend more heavily on wireless connections than the population at large, a reversal of the typical 'digital divide' patterns in personal computer and wireline broadband adoption. How will SoftBank's plans advance universal broadband access, adoption, and informed use?
- How would the transaction expand access to those that cannot afford to purchase broadband today? (Reports indicate that 24% of the U.S. population that does not have broadband lacks access because of affordability.¹¹)
- How would the transaction increase multi-modal competition (e.g., allow for more bundling of communication services) relative to incumbent carriers and program distributors?
- How would the transaction enhance access to content and programming diversity, especially through the use of mobile broadband and other converged services, for minority, disabled, and other communities that have been underserved in the communications and media marketplace?
- What will the new Sprint do to advance the hiring/promotion of racially diverse persons for senior management?
- How would the transaction offer opportunities for minority- and women-owned business enterprises to participate in the mobile broadband ecosystem, either as content and/or service providers to end-users on the applicants' network or through procurement opportunities with the applicants' operations (e.g., in the provision of equipment and services such distribution, construction, and others)?

¹¹ U.S. Dep't of Commerce, Economics and Statistics Administration & National Telecommunications and Information Administration, Exploring the Digital Nation: Computer and Internet Use at Home vi (2011), available at <http://www.ntia.doc.gov/report/2011/exploring-digital-nation-computer-and-internet-use-home> (last accessed May 23, 2013) (24 percent of households without broadband internet or dial-up service cited lack of affordability as the reason).

- How will the transaction affect Sprint employment in the United States? How would the companies incorporate increased recruitment and training in majority-minority communities?
- What is SoftBank's explanation for the reported requirement of a valid passport for the purchase of an iPhone in Japan, and can SoftBank commit to not imposing overly burdensome identification requirements in the United States?¹²
- What other commitments is SoftBank prepared to make to ensure that its proposed transaction delivers affirmative public interest benefits to U.S. consumers, including historically underserved groups and communities?

MMTC looks forward to your leadership to advance competition, diversity, and equal opportunity in each Commission-regulated industry. We are committed to working with you and the Commission to achieve these goals.

Sincerely,



David Honig
President

cc: Commissioner Ajit Pai
Commissioner Jessica Rosenworcel

¹² Certain reports suggest that SoftBank may have required, in some cases, the presentation of a passport for the purchase of an iPhone in Japan. See Softbank and Shinsei Bank Illegally Require "Gaijin Cards"/Passports for All NJ Service, Debito.org (Oct. 30, 2007), <http://www.debito.org/?p=677> ("Debito Blog") (last accessed May 23, 2013); Foreigners Who Want an iPhone Face Severe Limitations, JapanProbe.com (July 11, 2008), <http://www.japanprobe.com/2008/07/11/foreigners-who-want-an-iphone-face-severe-limitations/> (last accessed May 23, 2013). Many diversity advocates have expressed their concern about overly burdensome proof of identity practices, in light of their obvious potential for discrimination against minorities. See, e.g. Motion to Affirm of Certain Appellee-Intervenors at 20-25, Texas v. Holder, No. 12-1028 (May 9, 2013) (motion filed by the NAACP, the Lawyers' Committee on Civil Rights and several other organizations to affirm a district court decision denying preclearance of a Texas law requiring voter identification, pursuant to Section 5 of the Voting Rights Act).